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Fifty-first session

REQUEST FOR THE INCLUSION OF A SUPPLEMENTARY ITEM IN THE AGENDA OF THE FIFTY-FIRST SESSION

ELIMINATION OF COERCIVE ECONOMIC MEASURES AS A MEANS OF POLITICAL AND ECONOMIC COMPULSION

Letter dated 15 August 1996 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith a letter dated 15 August 1996 addressed to you by Mr. Omar Mustafa Muntasser, Secretary of the General People's Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya, requesting the inclusion of a supplementary item in the agenda of the fifty-first session of the United Nations General Assembly (see annex).

(Signed) Mohamed A. AZWAI
Permanent Representative

ANNEX

Letter dated 15 August 1996 from the Secretary of the General People's Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya addressed to the Secretary-General

In accordance with rule 14 of the rules of procedure of the General Assembly, I have the honour to request that a supplementary item, entitled "Elimination of coercive economic measures as a means of political and economic compulsion", be included in the agenda of the fifty-first session of the United Nations General Assembly for consideration in plenary session. I enclose herewith an explanatory memorandum relating to this request (see appendix).

(Signed) Omar Mustafa MUNTASSER
Secretary of the General People's Committee for Foreign Liaison and International Cooperation

APPENDIX

Explanatory memorandum relating to the request for the inclusion of a supplementary item, entitled "Elimination of coercive economic measures as a means of political and economic compulsion", in the agenda of the fifty-first session of the General Assembly

The General Assembly has frequently expressed its disapproval of the fact that developed countries are continuing to apply economic measures for the purpose of exercising coercion with respect to the sovereign decisions taken by developing countries. The General Assembly has affirmed this position on the grounds that such measures are inconsistent with the purposes of the Charter of the United Nations and, in particular, with the provisions of Article 1, paragraph 3, which speaks of achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and of Article 2, paragraph 4, which states that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations.

The General Assembly has opposed the use of coercive measures because of their harmful impact on the economies of developing countries. Article 32 of the Charter of Economic Rights and Duties of States, adopted by the General Assembly in its resolution 3281 (XXIX), stipulates that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

Also, in its resolution 2131 (XX), containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, annexed to its resolution 2625 (XXV), the General Assembly affirms that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

By its resolutions 44/215, 46/210, 48/168 and 50/96, the General Assembly urges the international community to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral coercive economic measures against developing countries as a means of forcibly imposing the will of one State on another.

The Platform for Action adopted by the Fourth World Conference on Women calls upon Governments and international and regional organizations to refrain from taking any unilateral measures that are not consistent with international law and the Charter of the United Nations and hinder the full achievement of the economic and social development of the inhabitants of disadvantaged countries, impede their welfare and create obstacles to their full enjoyment of human rights, including the right of all individuals to enjoy a standard of living

appropriate to their health and well-being and their right to food, medical care and necessary social services.

In its resolutions 47/19, 48/16, 49/9 and 50/10, the General Assembly expresses its concern about the continued promulgation and application by Member States of laws and regulations whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation. It reiterates its call to all States to refrain from promulgating and applying laws and measures of this kind, and it once again urges States that have and continue to apply such laws and measures to take the necessary steps to repeal or invalidate them as soon as possible in accordance with their legal regime.

Although the General Assembly has reiterated its demands that developed countries should refrain from imposing trade restrictions, embargoes, bans and other measures, they have continued to apply such measures to a number of developing countries. These measures assumed a new dimension when, on 8 August 1996, the President of the United States signed an Act imposing sanctions on foreign companies investing in oil in certain countries, including Libya.

The enactment by the United States of America of this law is not only a breach of international law that violates the principle of the territorial and personal character of laws, but is an attempt to exercise world hegemony, inasmuch as the United States Government is endeavouring to apply its own laws to citizens and entities in independent sovereign States.

The measure taken by the United States further shows disdain for the resolutions of the United Nations, which forbid the use by any State of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. It also shows the contempt of the United States for the desires of the great majority of States, which have urged it not to enact laws that purport to operate outside its national jurisdiction and to impose sanctions on third-country companies on the grounds that such measures violate numerous resolutions adopted by the United Nations Conference on Trade and Development and the rules of the World Trade Organization calling for free trade among the countries of the world and for the freedom of States to engage in trade with other States to be free of restrictions.

The Libyan Arab Jamahiriya is of the view that, when a State Member of the United Nations disregards international covenants and resolutions and applies its national laws outside its territorial boundaries, and thereby endeavours to destroy one of the pillars of the international legal order, namely the principle of State sovereignty, then the General Assembly as the organ of the United Nations that embraces all Member States, must consider the matter and adopt the necessary measures to eliminate coercive measures that are incompatible with all international custom and international covenants and that impede the development of those friendly relations that all States strive to achieve.

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REQUEST FOR THE INCLUSION OF A SUPPLEMENTARY SUB-ITEM IN THE AGENDA OF THE FIFTY-FIRST SESSION

INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION ON THE LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS

Letter dated 21 August 1996 from the Permanent Representative of Malaysia to the United Nations addressed to the Secretary-General

In accordance with rule 14 of the rules of procedure of the General Assembly, I have the honour to request that a supplementary sub-item entitled "International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" be included in the agenda of the fifty-first session of the General Assembly under item 71, "General and complete disarmament".

In conformity with rule 20 of the rules of procedure of the General Assembly, I attach herewith an explanatory memorandum (see annex).

(Signed) RAZALI Ismail
Ambassador

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ANNEX

Explanatory memorandum

By its resolution 49/75 K, adopted on 15 December 1994, the United Nations General Assembly, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, requested the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

Written statements were submitted to the Court by 28 Member States and in the course of public sittings held from 30 October to 15 November 1995, the Court heard oral statements from 22 States. Malaysia presented both written as well as oral statements to the Court.

At a public sitting on 8 July 1996, the International Court of Justice recognized that for the first time in history, the threat or use of nuclear weapons is generally contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law, while also recognizing that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament.

Specifically the Court delivered the following opinion:

"THE COURT,

"(1) By thirteen votes to one,

Decides to comply with the request for an advisory opinion;

"(2) Replies in the following manner to the question put by the General Assembly:

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

C. Unanimously,

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President's casting vote,

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

F. Unanimously,

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

The Court's decision is important in that it set the legal parameter whereby the use of nuclear weapons indeed ignores customary international law and international treaties such as the Geneva and Hague Conventions. The threat to the survival of mankind by the existence of nuclear weapons grants the international community the right to take a position on the illegality of such weapons.

The General Assembly had requested the advisory opinion in order to assist its activities in the area of nuclear disarmament. Subsequently, the International Court of Justice rendered an opinion which has direct impact on the activities of the General Assembly and on the policies and obligations of Member States in the area of nuclear disarmament.

Malaysia believes that the General Assembly should acknowledge the Court for rendering an opinion in response to the Assembly's request. Malaysia also believes that an opportunity should be given for Member States to discuss the opinion during the fifty-first session, with consideration of appropriate action by the General Assembly in response to the Court's opinion.

The Government of Malaysia strongly believes that the inclusion of this sub-item in the agenda of the fifty-first session of the General Assembly will be in accordance with current approaches in the international scene towards nuclear disarmament.

For these reasons, Malaysia requests the inclusion of the item "International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" in the agenda of the fifty-first session of the General Assembly.